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## **EMPLOYMENT AGREEMENT**

This EMPLOYMENT AGREEMENT ("Agreement") is made effective as of July 3, 2010 and is entered into by and between the CITY OF NEWPORT BEACH, a California municipal corporation and Charter city, ("Employer" or "City") and JAY R. JOHNSON, ("Employee") an individual.

### **RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Pursuant to Sections 504(a) and 600 of the City Charter, and in accordance with Newport Beach Municipal Code ("NBMC") section 2.24.100, the City Manager has directed an open recruitment and screened all qualified applicants and other qualified persons known by the City Manager to be available for the position of Chief of Police.
- C. Following an open recruitment and an extensive competitive examination, interviewing, and screening process of numerous candidates, the City Manager believes Employee to be the best qualified on the basis of executive and administrative qualifications, with special reference to the experience and knowledge of accepted practice with respect to the duties of the Chief of Police as contemplated by and in conformity with NBMC section 2.24.100 and Civil Service Board Rules & Regulations ("CSBR&R") section 701.
- D. The City desires to employ Employee as Chief of Police and to enter into an Agreement with Employee upon the terms and conditions in this Agreement.
- E. Employee is willing to accept such employment on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

### **SECTION 1: Term**

Unless sooner terminated as provided in this Agreement, this Agreement shall be effective from July 3, 2010 ("Effective Date") and shall continue until Employer or Employee terminate this Agreement under the terms provided herein.

### **SECTION 2: Duties and Authority**

Employer agrees to employ Employee as Chief of Police to exercise the powers and authority and to perform the functions and duties of that position as specified in the

Newport Beach City Charter and Municipal Code and all relevant resolutions, rules, regulations, procedures, and state codes, as they currently or may in the future exist, specifically including but not limited to those set forth in the "Police Chief" description attached hereto as Exhibit A and incorporated herein by this reference. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by the City Manager, may legally assign.

### **SECTION 3: Compensation**

- A. Effective July 3, 2010, Employer agrees to pay Employee an Annual Base Salary of \$204,500.00 (Two Hundred and Four Thousand, Five Hundred Dollars). In the event that the Newport Beach Police Management Association ("PMA") agrees to a pre-tax payroll deduction for retirement contribution, that deduction shall apply to Employee in the same percentage of base pay as it does to PMA employees and for the same duration. This deduction from Employee's Annual Base Salary is contemplated as an offset to a portion of the Employee's share paid by the City to the California Public Employee Retirement System ("PERS" or "CalPERS") for the "3% at 50" retirement plan. This pre-tax payroll deduction is made pursuant to IRS Code Section 414(h)(2). As currently contemplated, the deduction is proposed at three and one-half percent (3.5%) of Annual Base Salary. Three and one-half percent of Employee's Annual Base Salary amounts to \$7,157.50 per year, resulting in an Annual Base Salary of \$197,342.50 after the 3.5% pre-tax payroll deduction described herein ("Adjusted Pre-Tax Salary"). Adjusted Pre-Tax Salary shall also be subject to deduction and withholding of any and all sums required for federal or state income tax, social security tax and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for other management employees. Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the manner (but not the amount) in which management employees are paid.
- B. Employer, by the City Manager, shall conduct an initial evaluation of Employee's performance promptly following the six (6) month anniversary of the Effective Date of this Agreement, with annual evaluations beginning at the one year anniversary of the Effective Date of this Agreement.

### **SECTION 4: Employee Benefits**

- A. Flex Leave. Employee shall accumulate Flex Leave as provided in the City's Key and Management Compensation Plan, Executive Management category ("Compensation Plan"), at the current rate of 30 days per year or 9.23 hours per pay period. The amount of Employee's accrued Flex Leave may not exceed a total of 648.18 hours, and no Flex Leave shall further accrue beyond the maximum total of 648.18 hours. The right to sell back accumulated Flex Leave

shall be consistent with the "Leave Sellback" provision of the Compensation Plan.

- B. **Administrative Leave.** Employee shall be entitled to eighty (80) hours of administrative leave per calendar year. For the 2010 calendar year only, Employee shall be entitled to forty (40) hours of administrative leave. Administrative leave will not accrue from calendar year to calendar year and must be used or lost at the conclusion of each calendar year. Consistent with the Compensation Plan, there is no right to sell back any accumulated Administrative Leave.
- C. **Holidays.** Employee shall be entitled to twelve (12) paid holidays and one (1) floating holiday per calendar year, as identified more specifically in section A of the Leaves provision of the Compensation Plan.
- D. **Additional Benefits.** Employee shall receive the same health insurance and retirement benefits, and be entitled to participate in plans and programs such as short term and long term disability plans, life insurance plans, and deferred compensation plans, as are available to Executive Management employees of the City, as provided in the Compensation Plan. Specifically:
  - 1. City has implemented an IRS qualified Cafeteria Plan for certain benefits as provided in section A of the "Benefits" portion of the Compensation Plan. City's contribution towards the Cafeteria Plan for Employee shall be One Thousand, Forty-Nine Dollars (\$1,049.00) per month. In addition, if Employee elects to participate in a City-sponsored medical plan, Employee shall be entitled to the minimum CalPERS participating employer contribution toward medical insurance, currently set at One Hundred and Five Dollars (\$105.00) per month for the 2010 calendar year, subject to annual adjustment on January 1 of each succeeding year.
  - 2. Employee shall be eligible for the "3% @ 50" retirement formula noted in section C(1) of the "Benefits" portion of the Compensation Plan.
  - 3. Employee shall be eligible to participate in the LIUNA Supplemental Pension program noted in section C(2) of the "Benefits" portion of the Compensation Plan.
  - 4. Employee shall be eligible to participate in the Medical Expense Reimbursement Plan (MERP) noted in section D of the "Benefits" portion of the Compensation Plan as a Category 1 employee hired after January 1, 2006.
  - 5. City shall provide term life insurance for Employee in the face value of Fifty Thousand Dollars (\$50,000.00).

This Agreement shall be deemed amended as to these benefits, and these benefits only, whenever the City Council adopts a resolution or takes action changing these benefits under the Compensation Plan.

- E. Annual Physical Exam. Employee shall undergo an annual physical examination by a Board-certified medical doctor and City shall reimburse Employee for the actual cost of the examination up to a maximum of One Thousand Dollars (\$1,000.00).
- F. Uniform Allowance. Employer shall provide Employee an annual allowance of One Thousand, Three Hundred Fifty Dollars (\$1,350.00) toward the cost of Employee's official Newport Beach Police Department police uniforms and related equipment, which amount shall be allocated to Employee in equal installments included in his biweekly paycheck and which shall be reported to PERS as additional compensation paid to Employee.
- G. City to Provide Automobile. Employee's duties require him to be available to respond to the demands of City business at all times and outside of regular business hours, including weekends. Therefore, City shall provide Employee with a vehicle that may be used for City-related business purposes. City anticipates that the vehicle provided to Employee may be a Chevy Tahoe, but the make and model of the vehicle shall remain in the City's sole discretion. City shall pay for reasonable maintenance of the vehicle and gasoline. It is contemplated by the parties that Employee will use the vehicle principally for City-related business, however, to the extent that Employee uses the vehicle for any incidental personal business, Employee shall pay for gasoline for all such personal use.
- H. City to Provide Cell Phone. City shall provide a City-owned cell phone for Employee's use for City-related business purposes, which shall be similar to cell phones and use plans provided to City's Key and Management employees. Employee acknowledges that City may change the manner in which it provides cell phone access to Key and Management employees, which may include a change in policy to provide a cell phone allowance to such employees, and Employee understands that he will be subject to any such change in City's policy.
- I. Key and Management Group, Executive Management Category. Employee shall be a member of the City's Key and Management Group, Executive Management category. As such, the benefits, terms and conditions of the Compensation Plan shall apply to Employee as provided more specifically above, provided however, in the event of a conflict between the provisions of this Agreement and the Compensation Plan, this Agreement shall prevail.

## **SECTION 5: General Business Expenses**

- A. Employer recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service to Employer. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Manager. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.
- B. Employer agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of Employer and Employee's mutually agreed upon goals, and which are related to Employee's duties or Employer's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, airfare (where applicable), ground transportation and meals. Reasonable expenses will also include the reasonable and actual cost of lodging for meetings outside of Orange County.
- C. The expenses to be budgeted and paid in this Section 5, Paragraphs A and B above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Manager. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate.

## **SECTION 6: At-Will Employment Relationship**

- A. Consistent with Section 504 of the City Charter and Newport Beach Municipal Code Chapter 2.12.020, Employee is appointed by, and serves at the pleasure of, the City Manager. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate this Agreement and the employment of Employee at any time, with or without cause. Employer shall pay Employee for all services through the Effective Date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 7, below. Nothing herein shall be construed to limit the rights and obligations of City and Employee provided in the Public Safety Officers Procedural Bill of Rights Act, codified at Government Code section 3300, et seq. ("POBAR").
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with Employer.

## **SECTION 7: Severance and Benefit Payoff at Termination**

- A. If Employer terminates this Agreement (thereby terminating Employee's Employment) without cause, as determined by the City Manager, Employer shall provide Employee with fourteen (14) calendar days written notice and shall pay Employee severance as follows:
1. If termination is effective on or before July 3, 2012, Employer shall pay Employee a lump sum severance benefit equal to twelve (12) months of his then applicable Annual Base Salary, and provide twelve (12) months of medical benefits as provided under the Compensation Plan beginning on the Effective Date of termination.
  2. If termination is effective on July 4, 2012 or any date thereafter, Employer shall pay Employee a lump sum severance benefit equal to six (6) months of his then applicable Annual Base Salary, and provide six (6) months of medical benefits as provided under the Compensation Plan beginning on the Effective Date of termination.
- B. If Employer terminates this Agreement (thereby terminating Employee's Employment) with cause, as determined by the City Manager, Employee shall not be entitled to any severance. As used in this Agreement, cause shall mean any of the following:
1. Conviction of a felony;
  2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
  3. Willful abandonment of duties;
  4. A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted direction of the City Manager or the policy decisions of the City Council made by the City Council as a body; and
  5. Any other intentional or grossly negligent action or inaction by Employee that materially and substantially: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to Employee or public safety; (c) violates properly established rules or procedures of Employer causing a material and substantial adverse impact on Employer; or (d) has a material and substantial adverse effect on Employer's interests as clearly defined and delineated by properly established City Council action taken by the Council as a body, policy, regulations, ordinances, or Charter provisions of Employer.

- C. Any dispute as to whether severance is excused under Section 7, Paragraph B above, shall be resolved consistent with then current City policies, rules and procedures and with Employer's and Employee's rights and obligations under POBAR.
- D. If Employee terminates this Agreement (thereby terminating Employee's Employment), Employee shall not be entitled to any severance.
- E. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Flex Leave. No compensation shall be paid for any accrued but unused administrative leave.

#### **SECTION 8: Employee's Obligations and Hours of Work**

Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote Employer's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including occasional as-needed attendance at City Council meetings). Employee's base salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of Employer and the exempt, salaried nature of the employment, employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at the Newport Beach Police Department, Monday through Friday during normal business hours.

#### **SECTION 9: Confidentiality**

- A. Employee acknowledges that in the course of his employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit, and shall not disclose the Confidential Information to others without the express written consent of City. All Confidential Information shall be promptly returned to the City immediately upon the effective date of any severance of employment.
- B. The obligations of Employer and Employee under this Section 9 shall survive the termination of this Agreement.

#### **SECTION 10: Outside Activities**

Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties and responsibilities to Employer.

#### **SECTION 11: Indemnification**

Consistent with the California Government Code, Employer shall defend and indemnify Employee, using legal counsel of Employer's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. In the event there is a conflict of interest between Employer and Employee in such a case so that independent counsel is required for Employee, Employer may select the independent counsel after having considered the input of Employee and shall pay the reasonable fees of such independent counsel consistent with City litigation guidelines and standard rates received by City from its chosen special counsel.

#### **SECTION 12: Other Terms and Conditions of Employment**

Employer may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

#### **SECTION 13: Notices**

Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER:  
City of Newport Beach  
c/o City Clerk  
3300 Newport Blvd.  
PO Box 1768  
Newport Beach, California 92658-8915

With a courtesy copy to:  
City Attorney  
City of Newport Beach  
3300 Newport Blvd.  
PO Box 1768  
Newport Beach, California 92658-8915

- (2) EMPLOYEE: Jay Johnson  
at the home address then shown in Employer's files

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service as provided by law.

#### **SECTION 14: General Provisions**

- A. Integration: This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Manager.
- B. Binding Effect: This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Choice of Law: This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Charter provisions, Codes, Ordinances, Policies and Resolutions.
- D. Severability: If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Employee's Independent Review: Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee

acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates reflected below each signature.

**EMPLOYER**  
**CITY OF NEWPORT BEACH,**  
**A Municipal Corporation**

**EMPLOYEE**


By:   
David Kiff, City Manager

By:   
Jay R. Johnson

Date: 6-30-2010

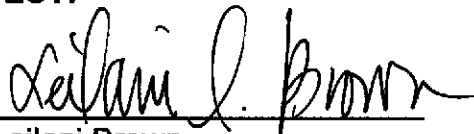
Date: 6-28-2010

**APPROVED AS TO FORM**  
Office of the City Attorney

By:   
Mynette D. Beauchamp,  
Assistant City Attorney

Date: 6/28/10

**ATTEST:**

By:   
Leilani Brown,  
City Clerk



## CITY OF NEWPORT BEACH

### POLICE CHIEF

**DEFINITION:** Under direction of the City Manager, the Police Chief is responsible for the administration, development, and advancement of the City's full service Police Department; to oversee and implement all programs and procedures related to crime prevention, law enforcement, and related policing services; to serve as a member of the City Manager's Executive Management Team; and to provide highly responsible and professional staff assistance to the City Manager and City Council.

**SUPERVISION RECEIVED AND EXERCISED:** Receives general administrative direction from the City Manager. Exercises general supervision over the entire department and direct supervision over division managers and professional/administrative support staff.

**CLASSIFICATION CHARACTERISTICS:** The Police Chief is expected to exercise independent judgment, wisdom, and innovation in establishing and administering all Police Department operations, consistent with the City Manager's expectations and with concern for the entire City government organization. As an inspiring leader, the Police Chief must demonstrate integrity and promote ethical standards within the department, advocate collaboration with the community, and be a team member with the City organization. The Police Chief must be politically astute, but apolitical.

**EXAMPLES OF ESSENTIAL DUTIES:** Duties may include, but are not limited to, the following:

#### **Essential Job Duties**

- Advancing the interests of the department and the City, plans, directs, and oversees a variety of programs designed for the maintenance of law and order and protection of life and property within the City of Newport Beach; develops comprehensive plans to satisfy needs for departmental services to ensure the highest possible quality of life for residents and visitors;
- Ensuring the optimum and most efficient and effective use of staffing and resources, administers the overall operation of a full service police department, including hiring, personnel administration, office operations, budgeting, and community relations; serves as a member of the City's Executive Management Team and collaborates with other departments to resolve city-wide problems;
- Demonstrating a strong working knowledge of the legal system, confers with legal advisors and City officials regarding law enforcement issues; provides professional and technical advice and assistance to the City Manager and City Council on matters related to law enforcement services; represents the City as a witness in

legal proceedings;

- Exhibiting exceptional communication skills, prepares and presents staff reports and related materials for City Council or public response; resolves issues raised by City Council members, community groups, employee associations, and the public; advocates the City's position in negotiations with various regulatory agencies to satisfy requirements;
- Building cohesive and collaborative departmental working relationships, plans, organizes, selects and supervises the work of departmental staff; establishes accountability throughout the department; promotes employee development through staff training and succession planning; ensures consistent application of City personnel policies and employee agreements;
- Demonstrating stewardship of public funds, directs the preparation and administration of the Police Department budget; participates in the forecast of revenue, expenses and additional funds needed; guides subordinate managers in developing and administering fiscally responsible budgets; carries out police functions in the most cost effective ways;
- Promoting a strong community policing program, establishes and maintains collaborative working relationships with property owners, community groups, business districts, and the public; represents the Police Department and the City at community and civic events; and

- Performs related duties as assigned.

**QUALIFICATIONS:** *To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.*

**Knowledge of:**

Advanced principles and practices of crime prevention and law enforcement, including criminal investigation and identification, patrol, traffic control, animal control, records management, care and custody of persons and property and environmental protection;

Principles and practices of organization, administration and personnel management, and leadership of a law enforcement agency;

Principles and techniques of municipal budget development and administration;

Applicable Federal, State and local laws, ordinances, codes and regulations;

Principles of supervision, training and performance evaluation;

Current technological and communication equipment and software applicable to the delivery of departmental services to internal and external customers;

Modern office practices, procedures, methods and equipment; and

The use of a PC and applicable software.

**Ability to:**

Effectively direct, plan and organize the activities of a comprehensive city-wide full service police department;

Critically analyze problems, identify alternative solutions, and implement recommendations in support of goals;

Understand the needs of a tourism-based community and its impact on public safety;

Promote collaboration and innovation;

Provide a stabilizing influence during periods of change;

Weigh risks and consequences and make clear decisions;

Equitably interpret and apply City policies, procedures, rules and regulations;

Diffuse conflict and gain cooperation through discussion and persuasion;

Motivate, select, supervise, and evaluate personnel;

Promote fiscal responsibility in administering a departmental budget;

Develop and maintain effective partnerships with community groups;

Build loyalty within the organization and advocate accessibility and responsiveness to the community;

Effectively and persuasively communicate, both orally and in writing; and

Establish and maintain cooperative working relationships with those contacted in the course of work.

**EXPERIENCE AND TRAINING:** Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

**Experience:** Seven years of increasingly responsible managerial and supervisory law enforcement experience, including at least three years at the rank of Captain or above.

**Training:** Equivalent to completion of a Bachelor's degree in criminal justice, law, management, public administration, business administration, or a related field from an accredited college or university. A Master's degree or Juris Doctorate is desirable.

**LICENSE OR CERTIFICATE:**

Possession of P.O.S.T. Management Certificate at time of appointment. Possession of P.O.S.T Executive Certificate desirable.

Possession of a valid California driver's license.

Completion of Federal Bureau of Investigation's National Academy is desirable.

**Additional Requirement:** Prior to employment, the prospective candidate must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police Department.

Key and Management Group – Executive Management  
Revised BR 2/2007  
Revised MWD: 2/17/2010 & CSB Approved 3/1/10